

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

DEMOCRACY NORTH CAROLINA, THE  
LEAGUE OF WOMEN VOTERS OF NORTH  
CAROLINA, DONNA PERMAR, JOHN P.  
CLARK, MARGARET B. CATES, LELIA  
BENTLEY, REGINA WHITNEY EDWARDS,  
ROBERT K. PRIDDY II, WALTER  
HUTCHINS, AND SUSAN SCHAFFER,

*Plaintiffs,*

*vs.*

THE NORTH CAROLINA STATE BOARD OF  
ELECTIONS; DAMON CIRCOSTA, in his  
official capacity as CHAIR OF THE  
STATE BOARD OF ELECTIONS; STELLA  
ANDERSON, in her official capacity  
as SECRETARY OF THE STATE BOARD OF  
ELECTIONS; KEN RAYMOND, in his  
official capacity as MEMBER OF THE  
STATE BOARD OF ELECTIONS; JEFF  
CARMON III, in his official  
capacity as MEMBER OF THE STATE  
BOARD OF ELECTIONS; DAVID C.  
BLACK, in his official capacity as  
MEMBER OF THE STATE BOARD OF  
ELECTIONS; KAREN BRINSON BELL, in  
her official capacity as EXECUTIVE  
DIRECTOR OF THE STATE BOARD OF  
ELECTIONS; THE NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION; J.  
ERIC BOYETTE, in his official  
capacity as TRANSPORTATION  
SECRETARY; THE NORTH CAROLINA  
DEPARTMENT OF HEALTH AND HUMAN  
SERVICES; MANDY COHEN, in her  
official capacity as SECRETARY OF  
HEALTH AND HUMAN SERVICES,

Civil Action No. 20-cv-457

**PLAINTIFFS' OBJECTION TO  
COURT'S PROPOSED JUDGMENT**

*Defendants,*

PHILIP E. BERGER, in his official  
capacity as PRESIDENT PRO TEMPORE  
OF THE NORTH CAROLINA SENATE;  
TIMOTHY K. MOORE, in his official  
capacity as SPEAKER OF THE NORTH  
CAROLINA HOUSE OF REPRESENTATIVES,

*Defendant-*

*Intervenors.*

Plaintiffs Democracy North Carolina, The League of Women Voters of North Carolina, John P. Clark, Lelia Bentley, Regina Whitney Edwards, Robert K. Priddy II, and Susan Schaffer respectfully object in part to the Court's proposed judgment and order to dismiss the Fourth Amended Complaint with prejudice. Specifically, Plaintiffs respectfully object to the Court's proposed dismissal of Plaintiffs' Count Two *with* prejudice because applicable law and this Court's prior ruling require this claim to be dismissed *without* prejudice.

The Court has ruled that Plaintiffs' Count Two, the due process claim, is unripe. Doc. 224 at 33 ("Because there is a sufficient cure procedure currently in place in North Carolina, this court finds any injury to Plaintiffs is not

ripe for review."); see also Doc. 237 at 7 (Order on Motion to Reconsider confirming this holding).

The Court therefore lacks subject matter jurisdiction over this claim since, "[a]s with standing, ripeness is a question of subject matter jurisdiction." *South Carolina v. United States*, 912 F.3d 720, 730 (4th Cir. 2019). If a "claim is not ripe," then "no case or controversy presently exists, and the district court [i]s without subject matter jurisdiction over that claim." *Greenspring Racquet Club, Inc. v. Baltimore Cnty.*, No. 99-2444, No. 00-1012, 2000 U.S. App. LEXIS 27207, at \*12 (4th Cir. 2000) (per curiam) (unpublished).

As a result, dismissal as unripe is not a failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), but rather a dismissal "under Federal Rule of Civil Procedure 12(b)(1), governing the dismissal of claims for lack of subject matter jurisdiction." *Id.* And when the court dismisses a claim for being unripe, "it [i]s precluded from dismissing that claim on the merits with prejudice." *Id.* at \*13. This is in accord with recent holdings that "'dismissal for lack of standing—or any other defect in subject matter

jurisdiction—must be one without prejudice, because a court that lacks jurisdiction has no power to adjudicate and dispose of a claim on the merits.’” *Goldman v. Brink*, 41 F.4th 366, 369 (4th Cir. 2022) (quoting *S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 185 (4th Cir. 2013)); *Ali v. Hogan*, 26 F.4th 587, 600 (4th Cir. 2022) (modifying judgment on appeal to be dismissal without prejudice after finding lack of subject matter jurisdiction); see also *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) (“Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.”).

Additionally, a dismissal without prejudice is required for consistency with this Court’s prior determination that “[s]hould the BoE rescind the cure procedure, Plaintiffs may bring suit to enforce their procedural due process rights.” Doc. 224 at 32.

Accordingly, to bring its judgment into compliance with U.S. Court of Appeals for the Fourth Circuit precedents, this

Court must amend the proposed judgment and order to dismiss  
Count Two without prejudice.

Dated: March 8, 2023. Respectfully submitted,

/s/ Hilary Harris Klein

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**WORD CERTIFICATION**

Pursuant to Local Rule 7.3(d)(1), the undersigned certifies that the word count for the above Plaintiffs' Objection to Court's Proposed Judgment is 501 words. The word count excludes the case caption, signature lines, cover page, and required certificates of counsel. In making this certification, the undersigned has relied upon the word count of Microsoft Word, which was used to prepare the brief.

/s/ Hilary Harris Klein  
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